THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 2588 of 2004

O r d e r:

Assailing the award 29.09.2003, passed by the Labour Court in I.D. No. 149 of 1998, the petitioners filed the present writ petition.

By the impugned award, the Labour Court came to the conclusion that respondent No.2-workman worked for more than 240 days and granted him the relief of reinstatement with continuity of service and full backwages.

The learned counsel for the petitioners submitted that burden of proof is on respondent No.2-workman to show that he had worked for more than 240 days in preceding year to claim regularization, and in support of his contention, he placed reliance on the judgment of the apex Court in **Surendranagar Distt. v. Gangaben Laljibhai**[1].

On the other hand, the learned counsel for respondent No.2-workman submitted that since the petitioner has prima facie proved that he had worked for more than 240 days, the Labour Court had directed his reinstatement with continuity of service and backwages, and no interference is warranted therewith.

Heard the learned counsel for the petitioners and the learned counsel for respondent No.2-workman and perused the impugned award.

A reading of the award would disclose that the Labour Court mainly relied on Ex. W3-xerox copy of the list, in which the name of respondent No.2-workman is shown at Sl. No. 15. Though, the said xerox document showed that respondent No.2-workman was in service from 09.11.1981 to 31.08.1984 and 15.08.1993, was under

break from 01.09.1984 to 14.08.1993, and reappointed on 15.08.1993, the fact remains, the date on the said xerox copy is not clearly visible. Although the Labour Court observed that the date on Ex. W3 is not clearly visible, yet based on such document, and that too without ascertaining its source and without examining any witness as to its authenticity, coupled with Exs. W1 and W2-legal notices, particularly Ex. W1, wherein in the legal notice at paragraph No.2, the list prepared by the Hostel Warden on the instructions dated 29.10.1994 of the Executive Officer were sent on 10.11.1994, the name of the petitioner was shown at Sl. No. 15, the Labour Court came to the presumption that the petitioner worked for more than 240 days. By the evidence placed by respondent No.2-workman, he cannot be said to have discharged is burden of proof beyond doubt, entitling him the relief of regularization of his services. Inasmuch as the Labour Court merely based on the contents of the legal notices, namely Exs. W1 and W2 and Ex. W3-xerox copy of list of names, came to the presumption that respondent No.2-workman had worked for more than 240 days, the impugned award passed by it directing reinstatement of respondent No.2-workman with continuity of service and backwages cannot be sustained.

Hence, the impugned award is set aside. The matter is remitted to the labour Court for adjudication from the stage of adducing evidence by both the parties, and after giving opportunity to both the parties to adduce evidence and after hearing them, pass appropriate award.

Accordingly, the writ petition is allowed. No costs.

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N.V. RAMANA, J.

Dated: 19.10.2006
KSR

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[1] 2006 (4) SLR 742